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AMENDED IN SENATE JUNE 23, 2009

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AMENDED IN ASSEMBLY JUNE 1, 2009

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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Lieu
(Coauthor: Senator Florez)

February 19, 2009

An act to add Division 21 (commencing with Section 60000) to the Financial Code, relating to debt.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Lieu. Debt management and settlement.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would enact the Debt Settlement Services Act and would, commencing January 1, 2012, provide for the licensing and regulation by the commissioner of providers, defined as persons who provide, offer to provide, or agree to provide debt settlement services, as defined, directly or through others. The bill would require a provider to submit specified fees and an application, *signed under penalty of perjury*, for

licensure with the commissioner. An applicant, and any person who signs an application on behalf of an applicant, who knowingly misrepresents or submits any material matter that is false, or a person who otherwise willfully violates a provision of the act, would be guilty of a misdemeanor. The bill would specify the conditions under which the commissioner may issue or deny licensure as a provider, ~~would require renewal of a provider's license on an annual basis,~~ and would require a provider to satisfy certain requirements before entering into an agreement with an individual for the provision of debt settlement services, including providing specified disclosures. The bill would require an agreement for debt settlement services to contain specified terms and would impose limits on the fees charged by providers. The bill would prohibit providers from engaging in specified practices. *The bill would require a provider to submit annual reports to the commissioner containing specified information relating to its business in the previous calendar year.* The bill would authorize the commissioner to take enforcement actions against a provider for violations of the bill's provisions and would also authorize an injured individual to recover specified damages from a provider that violates the bill's provisions. The bill would enact other related provisions.

Because the bill would create a new crime, *and expand the scope of the crime of perjury*, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Division 21 (commencing with Section 60000)
- 2 is added to the Financial Code, to read:

DIVISION 21. DEBT SETTLEMENT SERVICES ACT

CHAPTER 1. SHORT TITLE

60000. This division shall be known and may be cited as the Debt Settlement Services Act.

CHAPTER 2. DEFINITIONS

60001. As used in this division, the following definitions shall apply:

(a) "Agreement" means an agreement between a provider and an individual for the performance of debt settlement services.

(b) "Applicant" means any person who submits an application to the department for the purpose of seeking licensure to become a debt settlement provider.

(c) "Commissioner" means the Commissioner of Corporations.

(d) "Concessions" means assent to repayment of an unsecured debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

~~(e) "Debt settlement services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions on behalf of the individual, but without receiving money from the individual for distribution to the individual's creditor.~~

(e) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a licensee, whether through the ownership of voting securities, by contract, or otherwise. Control shall be presumed to exist if any person or persons, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities or other interest of any other licensee.

(f) "Debt settlement program" or "program" means a program or strategy in which a provider furnishes debt settlement services.

(g) "Debt settlement services" means acting or offering to act as an intermediary between an individual and one or more creditors of the individual for the purpose of adjusting, settling, discharging, reaching a compromise on, or obtaining a concession on the individual's unsecured debt or other unsecured obligation,

1 *in return for a fee or other consideration, without receiving money*
2 *from the individual for distribution to the individual's creditors.*

3 (h) *"Department" means the Department of Corporations.*

4 ~~(f)~~

5 (i) *"Financial analysis" means the review of an individual's*
6 *budget and income and expenses in order to make a determination*
7 *about the individual's qualification for a provider's debt settlement*
8 *program.*

9 ~~(g)~~

10 (j) *"Good faith" means honesty in fact and the observance of*
11 *reasonable standards of fair dealing.*

12 (k) *"Licensee" means any person licensed pursuant to this*
13 *division. "Licensee" does not include an employee regularly*
14 *employed by a licensee at the licensee's place of business.*

15 ~~(h)~~

16 (l) *"Person" means an individual, corporation, business trust,*
17 *estate, trust, partnership, limited liability company, association,*
18 *joint venture, or any other legal or commercial entity. The term*
19 *does not include a public corporation, government, or governmental*
20 *subdivision, agency, or instrumentality.*

21 ~~(i)~~

22 (m) *"Principal amount of the debt" means the amount of a debt*
23 *at the time of the execution of the agreement.*

24 ~~(j) "Program" means a program or strategy in which a provider~~
25 ~~furnishes debt settlement services.~~

26 ~~(k)~~

27 (n) *"Provider" means a person that provides, offers to provide,*
28 *or agrees to provide debt settlement services directly or through*
29 *others. "Provider" does not include either of the following:*

30 (1) *The services of a person licensed to practice law in this state,*
31 *when the person renders services in the course of his or her practice*
32 *as an attorney-at-law in an attorney-client relationship.*

33 (2) *The services of a person licensed as a certified public*
34 *accountant or a public accountant in this state, when the person*
35 *renders services in the course of his or her practice as a certified*
36 *public accountant or a public accountant.*

37 (3) *A family member of an individual that negotiates financial*
38 *concessions, with or without compensation, from the creditors of*
39 *the individual.*

40 ~~(f)~~

1 (o) "Record" means information that is inscribed on a tangible
2 medium or that is stored in an electronic or other medium and is
3 retrievable in perceivable form.

4
5 CHAPTER 3. GENERAL PROVISIONS
6

7 60002. This division shall not apply to the following persons
8 or their employees when the person or the employee is engaged
9 in the regular course of the person's business or profession:

10 (a) A judicial officer, a person acting under an order of a court
11 or an administrative agency, or an assignee for the benefit of
12 creditors.

13 ~~(b) A bank, bank holding company, or the subsidiary, agent, or~~
14 ~~affiliate of either, or a credit union or other financial institution~~
15 ~~licensed under state or federal law.~~

16 (b) *A financial institution under state or federal law, which is*
17 *limited to the following:*

18 (1) *Any bank or its agent, trust company, insurance company,*
19 *or industrial loan company doing business under the authority of*
20 *or in accordance with a license, certificate, or charter issued by*
21 *the United States or any state, district, territory, or commonwealth*
22 *of the United States that is authorized to transact business in this*
23 *state.*

24 (2) *A federally chartered savings and loan association, federal*
25 *savings bank, or federal credit union that is authorized to transact*
26 *business in this state.*

27 (3) *A savings and loan association, savings bank, or credit union*
28 *organized under the laws of this or any other state that is*
29 *authorized to transact business in this state.*

30 (4) *A person engaged solely in business, commercial, or*
31 *agricultural mortgage lending.*

32 (5) *A wholly owned service corporation of a savings and loan*
33 *association or savings bank organized under the laws of this state*
34 *or the wholly owned service corporation of a federally chartered*
35 *savings and loan association or savings bank that is authorized*
36 *to transact business in this state.*

37 (c) ~~A title insurer, escrow company, or other person~~ *California*
38 *licensed title insurer or escrow company in good standing that*
39 *provides bill paying services if the person does not provide debt*
40 *settlement services.*

(d) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner determines are licensed under Chapter 3 (commencing with Section 25230) of Part 3 of Division 4 of the Corporations Code.

(e) A person licensed or registered to originate loans secured by real property *when debt settlement services are provided in the course of a loan origination.*

(f) *A nonprofit community service organization that fulfills the requirements of Section 12104 and is exempt from the requirements of Division 3 (commencing with Section 12000).*

60003. All fees collected by the commissioner pursuant to this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

60004. The commissioner may adopt *general* rules and regulations ~~necessary to implement and specific rulings, demands, orders, and findings necessary to administer, implement, and enforce~~ this division in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

CHAPTER 4. LICENSING

60005. (a) No person shall *offer or* provide debt settlement services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is licensed under this division.

(b) The commissioner shall maintain and publicize a list of the names of all licensed providers, which shall be published by the commissioner within 180 days of the operative date of this division.

60006. (a) An application for licensure as a provider shall be ~~in a form prescribed by the commissioner.~~

~~(b) Subject to adjustment of dollar amounts pursuant to subdivision (a) of Section 60007, an application for licensure as a provider shall be accompanied by the following:~~

~~(1) The fee established by the commissioner.~~

~~(2) Evidence of a surety bond or minimum coverage of insurance, in an amount specified by the commissioner, which bond or insurance shall be maintained by the provider during the term of the license. The bond shall state that it is held for the benefit of the individuals who contract for debt settlement services, and can be claimed under by those individuals and by persons acting with respect to this division on behalf of those individuals, including the commissioner, a district attorney, city attorney, or the Attorney General.~~

~~(3) Proof that the applicant has filed appropriate documents with either the Secretary of State or the county in which the applicant is located to conduct a business in California, accompanied by all of the following:~~

~~(1) The sum of one thousand dollars (\$1,000) as a fee for investigating the application, the sum of not less than one thousand dollars (\$1,000) as an application fee, subject to adjustment under Section 60007, and the cost of fingerprint processing. The investigation fee and application fee are not refundable. Unused application fee funds shall be used to cover the cost of the program.~~

~~(2) Evidence of a surety bond in the amount of fifty thousand dollars (\$50,000), which shall be maintained by the provider during the term of the license.~~

~~(3) Financial statements prepared in accordance with generally accepted accounting principles and reviewed by an independent, third-party licensed accountant.~~

~~(b) As a substitute for the bond required in paragraph (2) of subdivision (a), a licensee may file either of the following with the commissioner in the same amount required under paragraph (2) of subdivision (a):~~

~~(1) An irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this division.~~

~~(2) Bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.~~

~~(c) Upon licensure as a provider, the bond required under this section shall be payable to the commissioner and issued by an~~

insurer authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner for review and approval within 10 days of execution. The bond shall be used for the recovery of losses or damages incurred by individuals as the result of a licensee's noncompliance with the requirements of this division or for the recovery of expenses, fines, and fees levied by the commissioner, a district attorney, city attorney, or the Attorney General.

(d) The bond required under this section shall remain in force and effect until the surety is released from liability by the commissioner, or until the bond is canceled by the surety.

(e) A licensee shall maintain a minimum net worth of one hundred thousand dollars (\$100,000) at all times as evidenced by the financial statement.

(f) A licensee shall annually file financial statements along with the annual report to the commissioner required under Section 60029.5.

60007. (a) The commissioner shall set an annual deadline for the submission of applications for licensure. ~~The Notwithstanding paragraph (1) of subdivision (a) of Section 60006, the~~ commissioner shall set, prior to the annual application deadline, based on its estimates of the cost of administering the program and the estimated number of license applicants, an application fee. Sixty days after the licensing deadline for the initial license, the commissioner shall determine, if necessary, a surcharge to cover the estimated costs for the remainder of the year, plus any deficit, if any, from the year prior, for administering this division. The surcharge shall be charged as a pro rata share to each applicant granted a license during that year based on the number of active enrolled California residents in that licensee's debt settlement program, with a reasonable minimum and maximum charge as determined by the commissioner.

(b) The commissioner shall notify each licensee by mail of the amount of the surcharge assessed against it and that the amount shall be paid within 30 days thereafter. If the licensee fails to pay the assessment on or before the 30th day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. *In the levying and collection of*

1 *the assessment, a licensee shall neither be assessed for, nor be*
2 *permitted to pay less than, one thousand dollars (\$1,000) per year.*

3 (c) Any applicant that files its application after the deadline
4 shall be charged the initial application fee plus the pro rata
5 surcharge specified in subdivision (a), and the application fee for
6 that applicant shall not be adjusted to account for any partial year.

7 60008. Every application for licensure shall be signed by the
8 applicant and shall declare, *under penalty of perjury*, as true any
9 material matter ~~pursuant to this~~ *submitted on the* application for
10 licensure. Any applicant, and any person who signs an application
11 on behalf of an applicant, who knowingly misrepresents or submits
12 any material matter that is false is guilty of a misdemeanor. The
13 application form shall contain a statement informing the applicant
14 that a false or dishonest answer to a question may be grounds for
15 denial or subsequent suspension or revocation of the applicant's
16 license. An application for licensure shall be in a form prescribed
17 by the commissioner and, *at a minimum*, shall include the
18 following:

19 (a) The applicant's name, principal business address and
20 telephone number, and all other business addresses in this state,
21 e-mail addresses, and Internet Web site addresses.

22 (b) All names under which the applicant conducts a debt
23 settlement business or a business for which licensure by the
24 Department of Corporations is required.

25 (c) The address of each location in this state at which the
26 applicant shall provide debt settlement services or a statement that
27 the applicant will have no such location.

28 (d) The name of each executive officer and director of the
29 applicant and each person that owns ~~at least 10 percent of the~~
30 ~~applicant.~~ *or controls, directly or indirectly, at least 10 percent or*
31 *more of the outstanding equity interests of the applicant and any*
32 *other information necessary for the investigation pursuant to*
33 *Section 60008.5.*

34 (e) A statement describing, to the extent it is known or should
35 be known by the applicant, any material civil or criminal judgment
36 relating to financial fraud or misuse and any material administrative
37 or enforcement action by a governmental agency relating to
38 financial fraud or misuse in any jurisdiction against the applicant,
39 any of its officers, directors, owners, *employees*, or agents.

~~(f) Evidence of accreditation or certification by an independent accrediting or certification organization approved by the commissioner. If the applicant has not had the opportunity to obtain accreditation or certification, the applicant shall provide proof of registration with a recognized accrediting or certifying organization along with a schedule under which it plans to obtain accreditation or certification. The applicant shall obtain accreditation or certification within six months of the date of its application. If an applicant fails to obtain accreditation as set forth in the information provided to the commissioner under this subdivision, the failure shall be a material violation of this division and subject to subdivision (b) of Section 60031.~~

~~(g)~~

(f) At the applicant's expense, via pursuant to the process in Section 60009, the results of a national criminal history records check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. Sec. 534) conducted within the immediately preceding 12 months, covering every executive officer of the applicant. The commissioner shall be the authorized agency to receive information regarding the results of the national criminal history records check under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

(g) Disclosure of common ownership by any person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities in the applicant by the following persons:

(1) Any person who advertises any service to assist consumers with reducing or eliminating debt.

(2) Any person who provides banking or similar depository services to consumers of debt settlement services providers.

(3) Any person, other than individuals employed by the applicant, with whom the applicant contracts to provide debt settlement services, or parts thereof, to consumers.

(h) An authorization for disclosure of financial records of the applicant pursuant to Section 7473 of the Government Code.

(i) The name and contact information of the risk manager for individual complaints as provided in Section 60026.

(j) A sample agreement and disclosures used by the applicant.

~~(h)~~

1 (k) Any other information that the commissioner reasonably
2 requires to determine whether to issue a license.

3 60008.5. (a) *Upon filing the application and payment of fees*
4 *pursuant to paragraph (1) of subdivision (a) of Section 60006 and*
5 *approval of the bond pursuant to Section 60006, the commissioner*
6 *shall investigate and examine the following:*

7 (1) *The background and experience of the applicant and of the*
8 *partners or members owning or controlling, directly or indirectly,*
9 *10 percent or more of the outstanding interests if the applicant is*
10 *a partnership, association, or limited liability company.*

11 (2) *The background and experience of the applicant and officers,*
12 *directors, and persons owning or controlling, directly or indirectly,*
13 *10 percent or more of the outstanding equity securities or interests*
14 *if the applicant is a corporation, trust, or association, including*
15 *an unincorporated organization.*

16 (b) *If the commissioner determines that the applicant has*
17 *satisfied the provisions of this division and does not find facts*
18 *constituting reasons for denial as specified in Section 60011, the*
19 *commissioner shall issue and deliver a license to the applicant to*
20 *engage in business in accordance with the provisions of this*
21 *division.*

22 60009. (a) An applicant for licensure shall provide to the
23 commissioner, and the commissioner shall submit to the
24 Department of Justice, fingerprint images and related information
25 required by the Department of Justice of all applicants for licensure
26 for purposes of obtaining information as to the existence and
27 content of a record of state or federal convictions and state or
28 federal arrests and also information as to the existence and content
29 of a record of state or federal arrests for which the Department of
30 Justice establishes that the person is free on bail or on his or her
31 own recognizance pending trial or appeal.

32 (b) When received, the Department of Justice shall forward to
33 the Federal Bureau of Investigation requests for federal summary
34 criminal history information received pursuant to this section. The
35 Department of Justice shall review the information returned from
36 the Federal Bureau of Investigation and compile and disseminate
37 a response to the Commissioner of Corporations.

38 (c) The Department of Justice shall provide state and federal
39 responses to the commissioner pursuant to paragraph (1) of
40 subdivision (p) of Section 11105 of the Penal Code.

(d) The commissioner may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for a person described in subdivision (a).

(e) The Department of Justice shall charge a fee, to be paid by an applicant for licensure, that is sufficient to cover the cost of processing the request described in this section.

(f) ~~All information proprietary and personal information, including, but not limited to, financial statements, sample agreements, fee schedules, and home addresses~~ supplied to the commissioner in connection with the application for licensure shall be held confidential by the commissioner.

60010. An applicant or licensed provider shall notify the department *in writing at least 10 days* prior to any change in the information specified in paragraph (2) of subdivision ~~(b) of (a) of, or in subdivision (b) of,~~ Section 60006 or in subdivision (a), (b), or (c) of Section 60008, or within 14 days after any change in the information specified in subdivision ~~(d) or (e), (e), (g), or (h)~~ of Section 60008, or any other information as required, by rule, by the commissioner.

60011. (a) Except as otherwise provided in subdivisions (b) and (c), the commissioner shall issue a certificate of licensure as a provider to a person that complies with this division.

(b) The commissioner may deny licensure for any of the following:

(1) ~~An application that contains information that is materially erroneous or incomplete.~~ *any omission or false statement of material fact or is incomplete.*

(2) ~~The applicant, an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving fraud, deceit, or dishonesty or the violation of state or federal securities or consumer protection laws.~~ *general partner, member, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has been convicted of or pleaded nolo contendere to a crime, or suffered a civil judgment or any administrative judgment by any public agency involving a finding of fraud, deceit, or dishonesty or has violated state or federal securities or consumer protection laws, or any regulatory scheme of the state or has been convicted of any other offense reasonably related to*

1 *the qualifications, functions, or duties of a person engaged in the*
2 *business in accordance with the provisions of this division.*

3 (3) An applicant or any officer, director, general partner,
4 member, or person owning or controlling, directly or indirectly,
5 10 percent or more of the outstanding interests or equity securities
6 of the applicant has made any false statement or representation to
7 the commissioner.

8 (4) An applicant is or becomes insolvent.

9 (5) An applicant refuses to reasonably comply with an
10 investigation or examination of the debt settlement service provider
11 by the commissioner.

12 (6) An applicant has improperly withheld, misappropriated, or
13 converted funds received in the course of doing business.

14 (7) An applicant has used fraudulent, coercive, or dishonest
15 practices, or demonstrated incompetence regarding debt settlement
16 services, or financial irresponsibility in this state or elsewhere.

17 (8) An applicant has shown to have engaged in a pattern of
18 failing to perform services promised.

19 (9) *An applicant or any officer, director, or general partner,*
20 *member, or person owning or controlling, directly or indirectly,*
21 *10 percent or more of the outstanding interests or equity securities*
22 *of the applicant has violated any provision of this division or the*
23 *rules or any order thereunder or any similar regulatory scheme*
24 *of the state or a foreign jurisdiction.*

25 (c) The commissioner shall deny licensure if the application is
26 not accompanied by the fee established by the commissioner.

27 (d) *The application shall be considered withdrawn within the*
28 *meaning of this section if the applicant fails to respond to a written*
29 *notification of a deficiency in the application within 90 days of the*
30 *date of the notification.*

31 60012. (a) The commissioner shall approve or deny an initial
32 license as a provider within 60 days after *the receipt of* a complete
33 application ~~is filed. In connection with a request pursuant to~~
34 ~~subdivision (h) of Section 60008 for additional information, the~~
35 ~~commissioner may extend the 60-day period for not more than 45~~
36 ~~days. Within 10 business, the receipt of criminal history~~
37 ~~background information from the Department of Justice, and the~~
38 ~~payment of required fees. Within 30 calendar days after denying~~
39 an application, the commissioner, in a record, shall inform the
40 applicant of the reasons for the denial.

(b) If the commissioner denies an application for licensure as a provider or does not act on an application within the time prescribed in subdivision (a), the applicant may appeal and request a hearing pursuant to the California Administrative Procedure Act (Chapter 3.5 4.5 (commencing with Section 11340) 11400) of Part 1 of Division 3 of Title 2 of the Government Code).

~~60013. (a) A provider shall obtain a renewal of its license annually.~~

~~(b) An application for renewal of licensure as a provider shall be in a form prescribed by the commissioner and be filed no fewer than 30 and no more than 60 days before the license expires.~~

~~(c) Application for renewal shall be accompanied by the fee established by the commissioner in an amount reasonably necessary for the administration of this division. The commissioner may, if necessary, also include a surcharge to the licensure renewal fee that shall be determined by the amount of the deficit, if any, for reasonable expenses and costs incurred greater than the revenue collected, in the administration of this division in the year immediately preceding the renewal year. The surcharge shall be charged to providers on a pro rata share based on the number of California residents enrolled in the provider's debt settlement services program.~~

~~(d) The commissioner, by rule, may require a provider to submit specific business information with the annual renewal application.~~

~~60013. A license is not transferable or assignable without the consent of the commissioner.~~

~~60013.5. No licensee shall provide debt settlement services in this state under any other name, or through an Internet Web site address other than those named in the license or except pursuant to a currently effective written order of the commissioner authorizing the other name or Internet Web site address.~~

~~60014. A person or entity licensed as a provider under this division shall be exempt from the requirements of Division 3 (commencing with Section 12000), except to the extent the person is performing services and activities governed by Section 12000 that do not constitute providing debt settlement services.~~

~~60014.5. In any proceeding under this division, the burden of proving an exemption or exception is upon the person claiming it.~~

CHAPTER 5. REGULATIONS

60015. A provider that is required to be licensed under this division shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a customer service representative, as appropriate, during ordinary business hours.

60015.5. (a) Every provider that offers a debt settlement program to an individual shall have reasonable grounds to believe that the individual is qualified for the debt settlement program and can reasonably meet the requirements of the program on the basis of information furnished by the individual after reasonable inquiry concerning the individual's financial situation and needs, including a financial analysis pursuant to Section 60016, and any other information known by the provider.

(b) In the furtherance of subdivision (a), and pursuant to a written policy, a provider shall consult with the individual and consider the following:

(1) Whether the individual's monthly income exceeds basic living expenses by an amount that permits the individual to meet the savings goals of the program.

(2) Whether the individual's creditors are likely to agree to the settlement of the individual's debts.

(3) Whether the individual is current or delinquent on debts.

(4) Any other consideration required by rule of the commissioner.

60016. (a) Before an individual assents to an agreement to engage in a program, the provider shall do all of the following:

(1) Prepare and provide *in not less than 12-point type* a written financial analysis specific to the individual. *The financial analysis shall be written in plain language and delivered to the individual prior to the individual assenting to the agreement.*

(2) Provide *in not less than 12-point type* a written good faith estimate of the length of time it will take to complete the program and a statement of the total amount of debt owed to each creditor included in the program. The estimate shall include a statement of the monthly savings goals for the individual *that are necessary* to complete the program.

(3) Based upon the completed financial analysis, make a determination *supported by the financial analysis* that the

1 individual is qualified for a debt settlement program and that the
2 individual can reasonably meet the requirements of the program
3 *pursuant to Section 60015.5.*

4 (4) Inform the individual in *not less than 12-point type* writing
5 of all of the following:

6 (A) The name and business address of the provider.

7 (B) That some programs are not suitable for some individuals.

8 (C) That the conduct of a program may negatively affect the
9 individual's credit rating or credit scores.

10 (D) That *creditors may continue to charge interest, late fees,*
11 *over the limit fees, and other fees and* nonpayment of debt may
12 lead creditors to increase finance and other charges or undertake
13 collection activity, including litigation *and garnishment of wages.*

14 (E) That unless the individual is insolvent, if a creditor settles
15 for less than the full amount of the debt, the program may result
16 in the creation of taxable income to the individual, even though
17 the individual does not receive any money.

18 (F) That specific results cannot be predicted or guaranteed.

19 (G) That a program requires an individual to meet certain
20 savings goals in order to maximize settlement results.

21 (H) That a provider, who is not otherwise authorized or
22 professionally licensed, does not provide accounting or legal advice
23 to individuals.

24 (I) That a provider does not receive compensation from an
25 individual's creditors, banks, or third-party collection agencies.

26 (J) That a provider cannot force negotiations or settlements with
27 creditors but will advocate solely on behalf of an individual.

28 (K) That if an individual terminates an agreement pursuant to
29 paragraph (1) of subdivision (b) of Section 60019, no additional
30 fees will be due.

31 (L) That the use of debt settlement services may not stop a
32 creditor from filing or pursuing a lawsuit against an individual.

33 (M) That the consumer may owe fees upon signing an agreement
34 whether or not any debts are reduced under the program.

35 (b) The provider shall insert the following statement, in not less
36 than ~~10-point~~ *12-point type*, in its debt settlement program
37 agreements:
38

1 “Complaints related to this agreement may be directed to the
2 Department of Corporations by calling (866) ASK-CORP or by
3 logging on to their Internet Web site at www.corp.ca.gov.”
4

5 60017. (a) For purposes of this section, the following
6 definitions apply:

7 (1) “Consumer” means an individual who seeks or obtains goods
8 or services that are used primarily for personal, family, or
9 household purposes.

10 (2) “Federal act” means the Electronic Signatures in the Global
11 and National Commerce Act (15 U.S.C. Sec.7001 et seq.).

12 (b) A provider may satisfy the requirements of Section 60016,
13 60019, 60020, or 60024 by means of the Internet or other electronic
14 means if the provider obtains a consumer’s consent in the manner
15 provided by Section 101(c)(1) of the federal act (15 U.S.C. Sec.
16 7001(c)(1)).

17 (c) The disclosures and materials required by Section 60016,
18 60019, 60020, or 60024 shall be presented in a form that is capable
19 of being printed and accurately reproduced for later reference.

20 (d) With respect to disclosure by means of an Internet Web site,
21 the disclosure of the information required by subdivision ~~(d)~~ (a)
22 of Section 60016 shall appear on one or more screens that satisfy
23 ~~both~~ all of the following:

24 (1) The screen contains no other information.

25 (2) An individual shall be able to see the screen before
26 proceeding to assent to formation of a program.

27 (3) *The individual has not been required to submit personal*
28 *information, including information regarding debts, prior to*
29 *accessing the disclosures.*

30 (e) At the time of providing the materials and agreement required
31 by ~~subdivisions (a), (b), and (c)~~ subdivision (a) of Section 60016,
32 Section 60019, and Section 60024, a provider shall inform the
33 individual, pursuant to Section 60020, that upon electronic,
34 telephonic, or written request, it will send the individual a written
35 copy of the materials, and shall comply with a request as provided
36 in subdivision (f).

37 (f) If a provider is requested, before the expiration of 90 days
38 after a program is completed or terminated, to send a written copy
39 of the materials required by subdivisions (b) and (c) of Section
40 60016, Section 60019, and Section 60024, the provider shall send

1 them, pursuant to Section 60020, at no charge within three business
2 days after the request, but the provider shall not be required to
3 comply with a request more than once per calendar month ~~or if it~~
4 ~~reasonably believes the request is made for purposes of~~
5 ~~harassment.~~ If a request is made more than 90 days after a program
6 is completed or terminated, the provider shall send within a
7 reasonable time a written copy of the materials requested.

8 60018. A provider shall maintain an Internet Web site and shall
9 disclose all of the following on the home page of its Internet Web
10 site or on a page that is clearly and conspicuously connected to
11 the home page by a link that clearly reveals its contents:

12 (a) Its name, business address, telephone number, and e-mail
13 address, if any.

14 (b) Its license number under this division and a link to the
15 department's Internet Web site.

16 (c) All other disclosures required by law.

17 60019. (a) An agreement under this division shall satisfy all
18 of the following requirements:

19 (1) Be in writing, dated, and signed by the individual.

20 (2) Include the name of the individual and the address where
21 the individual resides.

22 (3) Include the name, business address, and telephone number
23 of the provider and, if this does not include a street address in
24 California, the name and address of its California agent for service
25 of process.

26 (4) Be delivered to the individual immediately upon formation
27 of the agreement. For purposes of this paragraph, delivery of an
28 electronic record occurs when it is sent to the individual and made
29 available in a format in which the individual may retrieve, save,
30 and print, and the individual is notified that it is available.

31 (5) Include all disclosures required under Section 60016.

32 (6) Disclose all of the following:

33 (A) The list required under subdivision (a) of Section 60016.

34 (B) The amount, and method of determining the amount, of all
35 fees, individually itemized, to be paid by the individual.

36 (C) How the provider will comply with its obligations under
37 subdivision (a) of Section 60024.

38 (D) That the individual may contact the Department of
39 Corporations with any questions or complaints regarding the
40 provider.

1 (7) Display the following provisions, which shall appear
2 prominently and clearly on the front page:

3 (A) The total amount of the debt brought into the program.

4 (B) The setup fee amount to be paid by the individual, if any.

5 (C) The monthly fee to be paid by the individual, if any,
6 *including an explanation of how this amount will be collected from*
7 *the individual.*

8 (D) The estimated number of months for which a monthly fee
9 is required by the agreement.

10 (E) An estimate of the total amount of fees reasonably
11 anticipated to be paid by the individual over the term of the
12 agreement, as applicable.

13 (F) The total amount of fees that may be charged under the
14 contract.

15 (b) An agreement under this division shall provide the following:

16 (1) That the individual has a right to terminate the agreement
17 at any time by giving the provider written or electronic notice.
18 Termination of the agreement becomes effective immediately upon
19 receipt by the provider, at which time all powers of attorney granted
20 by the individual to the provider are revoked and ineffective.

21 (2) That the individual can cancel an agreement and receive a
22 full refund of any moneys paid to the provider before midnight of
23 the fifth business day after the individual assents to it. Notice of
24 cancellation is effective upon proof of sending the notice prior to
25 the deadline. Upon cancellation the provider shall refund all fees
26 no later than 10 business days from the date of cancellation.

27 (3) That any power of attorney only authorizes the provider, as
28 reasonably necessary, to communicate with creditors for the
29 purposes of negotiating settlement offers and to initiate transfer
30 of funds in accordance with Section 60025.

31 (4) That the provider shall notify the individual within three
32 business days after learning of a creditor's decision to cease final
33 negotiation with the provider. This notification shall include both
34 of the following:

35 (A) The identity of the creditor.

36 (B) The right of the individual to modify or terminate the
37 agreement.

38 (C) The terms and conditions of the agreement modification
39 process.

40 (c) An agreement shall not do any of the following:

1 (1) Provide for application of the law of any jurisdiction other
2 than this state.

3 (2) Except as permitted by the California Arbitration Act (Title
4 9 (commencing with Section 1280) of Part 3 of the Code of Civil
5 Procedure), contain a provision that modifies or limits otherwise
6 available forums or procedural rights, including the right to trial
7 by jury, that are generally available to the individual under law
8 other than as provided in this division.

9 (3) Contain a provision that restricts the individual's remedies
10 under this division or under another law of this state.

11 (4) Contain a provision that does any of the following:

12 (A) Limits or releases the liability of any person for not
13 performing the agreement or for violating this division.

14 (B) Indemnifies any person for liability arising under the
15 agreement or this division.

16 (C) Require the individual to be responsible for payment of
17 attorney's fees of the provider.

18 (5) *Contain a hold harmless clause excusing a provider's duties*
19 *under this division.*

20 (6) *Contain assignment of, or order for payment of, wages or*
21 *other assignment of compensation for services.*

22 (7) *Contain an acceleration provision not authorized under this*
23 *division.*

24 (8) *Contain an unconscionable provision.*

25 (d) All rights and obligations specified in subdivision (b) exist
26 even if not provided in the agreement. A provision in an agreement
27 that violates subdivision (b) or (c) is void.

28 60020. If a provider communicates with an individual primarily
29 in a language other than English, the provider shall furnish a
30 translation into the other language of the disclosures and documents
31 required by this division.

32 ~~60021. (a) The total of all fees charged by a provider shall not~~
33 ~~exceed 20 percent of the principal amount of debt which includes~~
34 ~~a maximum total set up fee specific to the individual of up to 5~~
35 ~~percent. The provider's total fees must be spread over at least half~~
36 ~~the length of the program or until offers of settlement by creditors~~
37 ~~are obtained on at least half of the debts enrolled to the provider.~~
38 ~~In no case shall total fees exceed 20 percent of the principal debt,~~
39 ~~and the total fees plus settlements cannot exceed the principal~~

~~amount of the debt. However, this section shall not preclude an individual from voluntarily prepaying fees earned by the provider.~~

60021. (a) A provider may charge one of the following, the terms of which shall be clearly disclosed in the agreement:

(1) With respect to an agreement that provides for a flat fee, total fees shall not exceed 18 percent of the principal amount of the debt enrolled in the debt settlement program which shall be collected at a rate of no more than 1 percent of the principal amount of debt per month, or if the program is less than 18 months in length, in equal monthly payments for the term of the program. The debtor may voluntarily accelerate or prepay any unpaid installment payment of fees, and the provider may collect fees on a pro rata basis once the provider has finalized settlements from any creditors.

(2) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a provider may charge the following:

(A) A fee for consultation, obtaining a credit report, and setting up an account, in an amount not exceeding the lesser of four hundred dollars (\$400) or 4 percent of the debt in the program at the inception of the program or a higher amount set forth in regulation.

(B) A monthly service fee, not to exceed fifty dollars (\$50) total, or a higher amount authorized by the commissioner, in any month.

(C) A settlement fee that shall not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized under subparagraph (B) shall become billable only as debts are settled.

(D) A provider shall not impose or receive fees under both subparagraphs (A) and (B).

(b) A provider shall not impose, directly or indirectly, a fee or other charge on an individual or receive money from or on behalf of an individual for debt settlement services except as permitted by this section.

(c) A provider shall not impose charges or receive payment for debt settlement services until the provider and the individual have signed an agreement that complies with Sections 60016, 60019, and 60020.

(d) If a payment to a provider by an individual under this division is dishonored, a provider may impose a reasonable charge on the individual, not to exceed fifteen dollars (\$15). Any charge pursuant to this subdivision shall be limited to one per payment due.

60022. (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 60021, the agreement is void and the individual may recover as provided in Section 60032.

(b) If a provider is not licensed as required by this division when an individual assents to an agreement, the agreement shall be void.

(c) If an agreement is void pursuant to subdivision (a) or (b), the provider shall not have a claim against the individual for breach of contract or for restitution.

(d) Subdivision (a) shall not apply to an error in computation in the amount of an authorized fee if ~~(1) the provider shows by a preponderance of evidence that the violation was not willful and resulted from a good faith error, notwithstanding the maintenance of procedures reasonably adapted to avoid that error, and (2) within 60 days of discovering the error the provider notifies the individual of the error and makes whatever adjustments in the account are necessary to correct the error.~~ *the provider makes whatever adjustments in the account are necessary to correct the error within 14 days of knowledge of the error.*

60023. If an individual who has entered into a fee agreement fails for 60 days to ~~make payments~~ *pay fees* required by the agreement, a provider may terminate the agreement *on the 60th day if a 30-day notice and opportunity to cure has been provided.* The provider may not earn additional fees *or charge an individual a termination fee* on or after termination.

60024. (a) A provider shall provide the accounting required by subdivision (b), as follows:

(1) Upon settlement of a debt.

(2) Within five business days after a request by an individual, but the provider shall not be required to comply with more than one request in any calendar month.

(3) Upon cancellation or termination of an agreement.

(b) A provider, in a record, shall provide the following to each individual for whom it has established a program if a creditor has

1 agreed to accept as payment in full an amount less than the
2 principal amount of the debt owed by the individual:

3 (1) The total amount and terms of the settlement.

4 (2) The amount of the debt when the individual assented to the
5 program.

6 (3) The amount of the debt when the creditor agreed to the
7 settlement.

8 (4) The fee, and the calculation of the fee, if any, charged to the
9 individual based on a percentage of the settlement of debt or based
10 on a percentage of the savings realized by the individual.

11 (c) A provider shall maintain records for each individual for
12 whom it provides debt settlement services for five years after the
13 final payment made by the individual. A provider shall produce a
14 copy of those records and provide them to the individual within a
15 reasonable time after a request for the records. The provider may
16 use electronic or other means of storage of the records.

17 (d) A provider shall provide the individual with a copy of the
18 written documentation from the creditor of a debt that has been
19 successfully settled, when available to the provider.

20 *(e) A provider that receives an individual's monthly billing*
21 *statements from the individual's creditor shall provide the*
22 *individual with monthly statements of the individual's outstanding*
23 *debt.*

24 60025. (a) A provider shall not, directly or indirectly, do any
25 of the following:

26 (1) Exercise or attempt to exercise a power of attorney not
27 authorized by the agreement.

28 (2) *Acquire any power of attorney other than to authorize the*
29 *provider, as reasonably necessary, to communicate with creditors*
30 *for the purposes of negotiating settlement offers and to initiate*
31 *transfer of funds in accordance with this division.*

32 ~~(2)~~

33 (3) Exercise or attempt to exercise a power of attorney after an
34 agreement has been cancelled or terminated.

35 ~~(3)~~

36 (4) Initiate a transfer of funds to or from an individual's bank
37 or other financial institution, unless the transfer is one of the
38 following:

39 (A) A return of money to the individual.

(B) Before termination of an agreement, properly authorized by the agreement and this division, *and in compliance with other rules and law governing direct debits to an individual's account*, for payment of a fee.

(C) A transaction that has been expressly approved in writing, or recorded statement, by the individual after the transaction has been presented to the individual for approval.

~~(D) A transaction expressly directed by the individual to the bank or financial institution.~~

~~(4)~~

(5) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual or provider receives a certification or confirmation by the creditor that the payment is in full settlement, or is part of a payment plan that is in full settlement, of the debt.

~~(5)~~

(6) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments.

(B) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.

(C) Participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

~~(6)~~

(7) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service.

~~(7) Knowingly employ an unfair, unconscionable,~~

~~(8) Employ an unconscionable or deceptive act or practice, including the knowing omission of any material information.~~

~~(8)~~

(9) Fail to respond to and research any complaint initiated by an individual within 20 days of receipt of the complaint and resolve each complaint in a prompt and reasonable manner.

~~(9)~~

1 (10) Require an individual participating in a debt settlement
2 program to utilize additional ancillary services.

3 ~~(10)~~

4 (11) Receive financial incentives or additional compensation
5 based on the outcome of the debt settlement program in excess of
6 the fee cap.

7 ~~(11)~~

8 (12) Pay referral fees to creditors or potential creditors who
9 refer new clients to the provider.

10 (b) If a provider furnishes debt settlement services to an
11 individual, the provider may not, directly or indirectly, do any of
12 the following:

13 (1) Purchase a debt or obligation of the individual.

14 (2) Receive from or on behalf of the individual either of the
15 following:

16 (A) A promissory note or other negotiable instrument other than
17 a check.

18 (B) A postdated check.

19 (3) Lend money or provide credit to the individual, except as a
20 deferral of a fee at no additional expense to the individual, or
21 advance a settlement payment for the individual at no additional
22 expense to the individual.

23 (4) Obtain a mortgage or other security interest from any person
24 in connection with the services provided to the individual.

25 (5) Force or otherwise require an individual to deposit his or
26 her funds into a specific financial institution. A provider must also
27 state to the individual that the individual is free to choose any
28 FDIC-insured or NCUA-insured financial institution. However,
29 this shall not prevent a provider from furnishing the individual
30 with a list of FDIC-insured or NCUA-insured financial institutions
31 from which the individual may choose or explaining the benefits
32 of using any particular financial institution.

33 (6) Except as permitted by federal and California law, disclose
34 the identity or identifying information of the individual or the
35 identity of the individual's creditors, except to:

36 (A) The commissioner, ~~upon proper demand~~.

37 (B) A creditor of the individual, to the extent necessary to secure
38 the cooperation of the creditor in a program.

39 (C) The extent necessary to administer the program.

(7) Except as otherwise provided in Section 60021, provide the individual less than the full benefit of a compromise of a debt arranged by the provider.

(8) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt settlement services or educational services concerning personal finance.

(9) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(10) Advise individuals to stop payment on any of the accounts ~~being handled by the provider.~~

(11) Hold an individual's funds in trust.

(12) Include in any debt settlement services agreement any secured debt.

(13) Engage in the business of debt collection on behalf of an individual's creditor.

(14) Engage in the business of debt buying for an individual represented by the provider.

(c) This division does not authorize any person to engage in the practice of law.

60026. (a) Each provider shall establish an internal formal complaint policy that creates a process for the provider to receive, review, and address or resolve formal complaints internally. The availability of this process shall be communicated in writing to individuals enrolled in the provider's program. This policy shall include a provision that ~~all consumers~~ *individuals* who file a formal complaint shall receive a response from the provider within 20 days from the provider's receipt of the complaint. The provider shall maintain a file for each formal complaint that documents the complaint, its handling, and the resolution, if any, of the complaint and the provider shall disclose the file to the commissioner upon request.

(b) Every provider shall have an employee to review internal complaints pursuant to the process set forth in this section.

60027. No later than 30 days after a provider has been served with notice of a civil action for violation of this division by or on behalf of an individual who resides in this state at either the time

1 of an agreement or the time the notice is served, the provider shall
2 notify the commissioner in a record that it has been sued.

3 60028. (a) Any advertising concerning debt settlement services
4 shall not contain any false, misleading, or deceptive statement or
5 omit to state any fact necessary to make the statements made, in
6 light of circumstances under which they are made, not false,
7 misleading, or deceptive.

8 (b) *No advertising shall be used after its use has been*
9 *disapproved by the commissioner and the licensee is notified in*
10 *writing of the disapproval.*

11 (c) *The commissioner may require licensees to maintain a file*
12 *of all advertising copy for a period of 90 days from the date of its*
13 *use. The file shall be available to the commissioner upon request.*

14 (d) *No licensee shall place an advertisement disseminated*
15 *primarily in this state for debt settlement services unless the*
16 *licensee discloses in the printed text of the advertisement, or the*
17 *oral text in the case of a radio or television advertisement, that*
18 *the licensee is licensed by the department pursuant to this division.*

19 60029. (a) ~~The~~ *Each licensee shall keep and use books,*
20 *accounts, and records in accordance with generally accepted*
21 *accounting practices and good business practice that will enable*
22 *the commissioner to determine if the licensee is complying with*
23 *the provisions of this division and with the rules and regulations*
24 *promulgated by the commissioner. Each licensee shall maintain*
25 *any other records as required by the commissioner.*

26 (b) *The commissioner may act on his or her own initiative or*
27 *in response to complaints and may receive complaints, take action*
28 *to obtain voluntary compliance with this division, refer cases to*
29 *the Attorney General, or any other law enforcement agency, and*
30 *seek or provide remedies as provided in this division.*

31 ~~(b) The~~

32 (c) *For the purpose of discovering violations of this division or*
33 *securing information required by the commissioner in the*
34 *administration and enforcement of this division, the commissioner*
35 *may investigate and examine ~~once every two~~ at any time, but not*
36 *less than once every four years, in this state or elsewhere, by*
37 *subpoena, report, or otherwise, the activities, books, accounts, and*
38 *records of a person that provides or offers to provide debt*
39 *settlement services, or a person to which a provider has delegated*
40 *its obligations under an agreement or under this division, to*

1 determine compliance with this division. *For the purposes of*
2 *examination, the commissioner and the commissioner's*
3 *representatives shall have access to the offices and places of*
4 *business, books, accounts, papers, records, and files of all these*
5 *persons.* Information that identifies individuals who have
6 agreements with the provider shall not be disclosed to the public.
7 In connection with the investigation, the commissioner may do
8 either of the following:

9 (1) Charge the person *or provider* the reasonable expenses
10 necessarily incurred to conduct the examination. *The commissioner*
11 *may maintain an action for the recovery of expenses in any court*
12 *of competent jurisdiction.*

13 (2) Require or permit a person to file a statement under oath as
14 to all the facts and circumstances of a matter to be investigated.

15 (d) *For the purpose of any investigation or proceeding under*
16 *this law, the commissioner or any officer designated by the*
17 *commissioner may administer oaths and affirmations, subpoena*
18 *witnesses, compel their attendance, take evidence, and require the*
19 *production of any books, papers, correspondence, memoranda,*
20 *agreements, or other documents or records that the commissioner*
21 *deems relevant or material to the inquiry. If the books, records,*
22 *and supporting data are located out of this state they shall be made*
23 *available for examination by the commissioner in this state within*
24 *10 days after a written demand.*

25 (e) *A provider shall maintain all records for five years following*
26 *the last entry on a debt settlement transaction and shall enable*
27 *the commissioner to review the recordkeeping and reconcile each*
28 *individual debt settlement transaction with documentation*
29 *maintained in the individual's debt settlement file records. Failure*
30 *to keep the records for five years following the last entry shall*
31 *authorize the commissioner to assess and collect a penalty of up*
32 *to ten thousand dollars (\$10,000) for each year that the records*
33 *are not kept.*

34 (e)

35 (f) The commissioner may enter into cooperative arrangements
36 with any other federal or state agency having authority over
37 providers and may exchange with any of those agencies
38 information about a provider, including information obtained
39 during an examination of the provider.

1 60029.5. (a) On or before March 15 of each year, beginning
2 March 2012, each licensee shall file an annual report with the
3 commissioner pursuant to procedures that the commissioner shall
4 establish by rule. The licensee shall submit with the annual report
5 a declaration that conforms to Section 2015.5 of the Code of Civil
6 Procedure, is executed by an official authorized by the licensee,
7 and that states that the licensee complies with this section. The
8 licensee's annual report shall be kept confidential pursuant to
9 Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
10 1 of the Government Code and any regulations adopted thereunder.
11 For the previous calendar year, the report shall include the
12 following:

13 (1) The total amount of debt for all individuals for whom a
14 licensee is providing debt settlement services, as of December 31.

15 (2) The total principal amount of debt of all individuals that
16 entered into agreements.

17 (3) The total number of individuals that entered into agreements.

18 (4) The total number of individuals with outstanding debt
19 settlement service agreements in California.

20 (5) The total number of debts settled by the provider.

21 (6) The total dollar amount of debts settled by the provider, as
22 follows:

23 (A) The dollar amount of the settled debt, as of the establishment
24 of the program.

25 (B) The dollar amount of the settled debt at the time of
26 settlement, without debtor concessions.

27 (C) The dollar amount of the settled debt with debtor
28 concessions.

29 (7) The total amount of fees collected from California
30 individuals.

31 (8) Any other information required by rule.

32 (b) The commissioner shall prepare an annual consolidated
33 report of the reports submitted by licensees pursuant to subdivision
34 (a) and shall make the consolidated report available to the public.

35 60029.9. (a) It is unlawful for any person to knowingly alter,
36 destroy, mutilate, conceal, cover up, falsify, or make a false entry
37 in any record, document, or tangible object with the intent to
38 impede, obstruct, or influence the administration or enforcement
39 of any provision of this division.

(b) *It is unlawful for any person to knowingly make an untrue statement or omit to state a fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.*

60030. (a) The commissioner may enforce this division and rules adopted under this division by taking one or more of the following actions:

(1) ~~Ordering a provider or a director, employee, or other agent of a provider to desist and refrain from any violations.~~ *any person to desist and refrain from engaging in debt settlement services or from further violating this division.*

(2) Ordering a provider or ~~a~~ any person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.

(3) *Issuing a citation to a provider or any person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and may include any other orders, such as an assessment of an administrative penalty pursuant to paragraph (4).*

~~(3)~~
(4) Imposing an administrative penalty not exceeding two thousand five hundred dollars (\$2,500) for each violation on a provider or a person that has caused a violation.

~~(4)~~
(5) Prosecuting a civil action to do either or both of the following:

(A) Enforce an order.

(B) Obtain restitution or an injunction or other equitable relief, or both.

(b) ~~If a person~~ *Any person who knowingly violates or knowingly* authorizes, directs, or aids in the violation of a final order issued under paragraph (1) or (2) of subdivision (a), ~~the commissioner may impose an administrative~~ *shall be liable for a civil* penalty not exceeding ten thousand dollars (\$10,000) for each violation, *which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.*

1 (c) The commissioner may recover the reasonable costs of
2 enforcing this division under subdivisions (a) and (b), including
3 attorney's fees based on the hours reasonably expended and the
4 hourly rates for attorneys of comparable experience in the
5 community.

6 (d) In determining the amount of a penalty to impose under
7 subdivision (a) or (b), the commissioner shall consider the
8 seriousness of the violation, the good faith of the violator, any
9 previous violations by the violator, the deleterious effect of the
10 violation on the public, the net worth of the violator, and any other
11 factor the commissioner considers relevant to the determination
12 of the civil penalty.

13 ~~(e) Any penalties or other amounts recovered by the~~
14 ~~commissioner under this section shall be paid into the State~~
15 ~~Corporations Fund.~~

16 *(e) After the exhaustion of the review procedures provided for*
17 *in this section, the commissioner may apply to the appropriate*
18 *superior court for a judgment in the amount of the administrative*
19 *penalty, cost, fee, or any forfeiture of charge or fee in connection*
20 *with the transaction and order compelling the cited person to*
21 *comply with the order of the commissioner. The application, which*
22 *shall include a certified copy of the final order of the commissioner,*
23 *shall constitute a sufficient showing to warrant the issuance of the*
24 *judgment and order.*

25 60030.5. (a) *Whenever the commissioner believes from*
26 *evidence satisfactory to the commissioner that any person has*
27 *violated or is about to violate a provision of this division, or a*
28 *provision of any order, license, decision, demand, requirement,*
29 *or any regulation adopted pursuant to this division, the*
30 *commissioner may, in the commissioner's discretion, bring an*
31 *action in the name of the people of the State of California against*
32 *that person to enjoin that person from continuing that violation*
33 *or doing any act in furtherance of the violation or to enforce*
34 *compliance with this law or any rule or order thereunder. Upon*
35 *a proper showing, a permanent or preliminary injunction,*
36 *restraining order, or writ of mandate shall be granted and a*
37 *receiver, monitor, conservator, or other designated fiduciary or*
38 *officer of the court may be appointed for the defendant or the*
39 *defendant's assets, or any other ancillary relief may be granted*
40 *as appropriate. A receiver, monitor, conservator, or other*

1 *designated fiduciary or officer of the court appointed by the*
2 *superior court pursuant to this section may, with the approval of*
3 *the court, exercise any or all of the powers of the defendant's*
4 *officers, directors, partners, trustees, or persons who exercise*
5 *similar powers and perform similar duties, including the filing of*
6 *a petition for bankruptcy. No action at law or in equity may be*
7 *maintained by any party against the commissioner, or a receiver,*
8 *monitor, conservator, or other designated fiduciary or officer of*
9 *the court, by reason of their exercising these powers or performing*
10 *these duties pursuant to the order of, or with the approval of, the*
11 *superior court.*

12 *(b) If the commissioner determines that it is in the public*
13 *interest, the commissioner may include in any action authorized*
14 *by subdivision (a) a claim for ancillary relief, including, but not*
15 *limited to, a claim for restitution, disgorgement, or damages on*
16 *behalf of the persons injured by the act or practice constituting*
17 *the subject matter of the action. The commissioner may include in*
18 *any action authorized by subdivision (a) a claim for costs,*
19 *including reasonable attorney's fees and expenses, and the court*
20 *shall have jurisdiction to award that relief and any other additional*
21 *relief.*

22 60031. (a) In this section, "insolvent" means any of the
23 following:

24 (1) The inability to pay debts in the ordinary course of business
25 other than as a result of good faith dispute.

26 (2) Being unable to pay debts as they become due.

27 (3) Being insolvent within the meaning of the federal bankruptcy
28 law (11 U.S.C. Sec. 101 et seq.).

29 (b) The commissioner may suspend, ~~revoke, or deny renewal~~
30 ~~of or revoke~~ a provider's license if:

31 (1) A fact or condition exists that, if it had existed when the
32 licensee applied for licensure as a provider, would have been a
33 reason for denying the license.

34 (2) The provider *or an officer, director, general partner,*
35 *manager, or person owning or controlling, directly or indirectly,*
36 *10 percent or more of the outstanding interests or equity securities*
37 *of the provider has committed a material violation of this division*
38 *or a rule or order of the commissioner* ~~under this division~~ *or any*
39 *similar regulatory scheme of this state or a foreign jurisdiction,*

1 *or has caused material damage to individuals who have agreements*
2 *with the provider or to the public.*

3 (3) The provider is insolvent.

4 (4) The provider or an employee or affiliate of the provider has
5 refused to permit the commissioner to make an examination
6 authorized by this division, failed to comply with paragraph (2)
7 of subdivision (b) of Section 60029 within 15 days after request,
8 or made a material misrepresentation or omission in complying
9 with paragraph (2) of subdivision (b) of Section 60029.

10 (5) The provider has not responded within a reasonable time
11 and in an appropriate manner to communications from the
12 commissioner.

13 (6) The provider *or an officer, director, general partner,*
14 *manager, or person owning or controlling, directly or indirectly,*
15 *10 percent or more of the outstanding interests or equity securities*
16 *of the provider has been convicted of a crime that involves*
17 *dishonesty, fraud, or deceit, and that is substantially or pleaded*
18 *nolo contendere to any crime, or has been held liable in any civil*
19 *action by final judgment, or any administrative judgment by any*
20 *public agency, if that crime or civil or administrative judgment*
21 *involved any offense involving dishonesty, fraud, or deceit, or any*
22 *other offense reasonably related to the qualifications, functions,*
23 *or duties of the licensed activity.*

24 (7) *The provider has failed to comply with any demand, ruling,*
25 *or requirement of the commissioner made pursuant to and within*
26 *the authority of this division.*

27 (c) If the commissioner suspends or revokes a provider's license,
28 the provider may appeal and request a hearing pursuant to the
29 California Administrative Procedure Act (Chapter ~~3.5~~ 4.5
30 (commencing with Section ~~11340~~ 11400) of Part 1 of Division 3
31 of Title 2 of the Government Code).

32 (d) *A provider shall not knowingly permit a person suspended*
33 *or barred under this section from engaging in any business activity*
34 *requiring a license under this division on the premises where the*
35 *provider is conducting business.*

36 60032. (a) If an agreement is void pursuant to subdivision (a)
37 or (b) of Section 60022, the individual may recover in a civil action
38 all money paid by or on behalf of the individual pursuant to the
39 agreement, in addition to the recovery under subdivision (b).

1 (b) An individual with respect to whom a provider violates this
2 division may recover the following in a civil action from the
3 provider and any person that caused the violation:

- 4 (1) Compensatory damages for injury caused by the violation.
5 (2) Reasonable attorney's fees and costs.

6 60033. If an act or practice of a provider violates both this
7 division and Chapter 5 (commencing with Section 17200) of Part
8 2 of Division 7 of the Business and Professions Code, an individual
9 may not recover under both for the same act or practice.

10 60034. (a) An action brought under this division shall be
11 commenced within three years after the latest of one of the
12 following:

13 (1) The last transmission of money to a provider by or on behalf
14 of the individual.

15 (2) The date on which the individual discovered or reasonably
16 should have discovered the facts giving rise to the individual's
17 claim.

18 (b) The period prescribed in paragraph (2) of subdivision (a)
19 shall be tolled during any period during which the provider or, if
20 different, the defendant has materially misrepresented information
21 required by this division to be disclosed to the individual, if the
22 information so misrepresented is material to the establishment of
23 the liability of the defendant under this division.

24 60035. This division shall not apply to a debt settlement
25 agreement between an individual and a provider for the
26 performance of debt settlement services that was entered into prior
27 to the operative date of this division.

28 ~~60036. The commissioner may make general rules and~~
29 ~~regulations and specific rulings, demands, and findings for the~~
30 ~~enforcement of this division.~~

31 60037. Any person, including a partner or officer of an entity
32 that is a licensee, who willfully violates any provision of this
33 division or who willfully violates any rule or order adopted
34 pursuant to this division, shall, upon conviction, be punished by
35 a fine of not more than ten thousand dollars (\$10,000), or by
36 imprisonment in a county jail for not more than one year, or by
37 both that fine and imprisonment. ~~However, no person may be~~
38 ~~imprisoned for the violation of any rule or order unless he or she~~
39 ~~had knowledge of the rule or order.~~

1 60038. A provider shall act in good faith in all matters under
2 this division.

3 60038.5. *After an examination, investigation, or hearing under*
4 *this division, if the commissioner deems it of public interest or*
5 *advantage, the commissioner may certify a record to the proper*
6 *prosecuting official of the city, county, or city and county in which*
7 *the act complained of, examined, or investigated occurred. The*
8 *data and records shall be kept confidential pursuant to Chapter*
9 *3.5 (commencing with Section 6250) of Division 7 of Title 1 of the*
10 *Government Code and any regulations adopted thereunder.*

11 60038.9. *The rights, remedies, and penalties established by*
12 *this division are cumulative to the rights, remedies, or penalties*
13 *established under other laws. It is not necessary to exhaust*
14 *administrative remedies in order to pursue the civil remedies*
15 *provided for in this division. As applied to the penalties for acts*
16 *in violation of this division, the remedies provided by this division*
17 *are not exclusive and may be sought and employed in any*
18 *combination to enforce the provisions of this division.*

19 60039. This division shall become operative on January 1,
20 2012.

21
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23

24 60050. The provisions of this division are severable. If any
25 provision of this division or its application is held invalid, that
26 invalidity shall not affect other provisions or applications that can
27 be given effect without the invalid provision or application.

28 SEC. 2. *The Legislature finds and declares that Section 1 of*
29 *this act imposes a limitation on the public's right of access to the*
30 *meetings of public bodies or the writings of public officials and*
31 *agencies within the meaning of Section 3 of Article I of the*
32 *California Constitution. Pursuant to that constitutional provision,*
33 *the Legislature makes the following findings to demonstrate the*
34 *interest protected by this limitation and the need for protecting*
35 *that interest:*

36 *In order to allow the Department of Corporations to fully*
37 *accomplish their goals, it is imperative to protect the interests of*
38 *those persons submitting information to the department to ensure*
39 *that any personal or sensitive business information that this act*

1 *requires those persons to submit is protected as confidential*
2 *information.*

3 ~~SEC. 2.~~

4 SEC. 3. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13

14

15 CORRECTIONS:

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